

Assembly Bill No. 2190

Passed the Assembly August 28, 2014

Chief Clerk of the Assembly

Passed the Senate August 27, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 1601, 1602, and 1603 of the Penal Code, and to amend Section 5354 of the Welfare and Institutions Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2190, Maienschein. Criminal defendants: gravely disabled persons.

(1) Existing law prohibits outpatient status for a person who is charged with and found incompetent on a charge of, convicted of, or found not guilty by reason of insanity of certain crimes, including, but not limited to, murder, mayhem, aggravated mayhem, or any felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, until the person has actually been confined in a state hospital or other treatment facility for at least 180 days.

Existing law permits outpatient status, without first being confined in a state hospital or other treatment facility, for a person charged with, and found incompetent on a charge of, or convicted of, any misdemeanor or any felony other than those described above, or found not guilty of any misdemeanor by reason of insanity, if specified conditions are met.

This bill would exempt from this 180-day prohibition cases where the court finds a suitable placement, including, but not limited to, an outpatient placement program, that would provide the person with more appropriate mental health treatment and the court finds that the placement would not pose a danger to the health or safety of others.

(2) Existing law establishes other conditions under which the above-described persons are eligible for outpatient status, including, but not limited to, that both the director of the treatment facility and the community program director advise the court that the person no longer poses a danger and would benefit from outpatient status.

This bill would remove these conditions and would, instead, require that the court consider whether those advisements had been made, and would make conforming changes.

(3) Existing law, the Lanterman-Pertis-Short Act, authorizes the appointment of a conservatorship for a person who is gravely disabled as a result of mental disorder or impairment by chronic alcoholism. Existing law requires the officer providing the conservatorship investigation to investigate all available alternatives to conservatorship and to recommend conservatorship to the court only if no suitable alternatives are available, and to render a written report to the court. Existing law authorizes a court to order a person alleged, as a result of mental disorder, to be a danger to others, or to himself or herself, or to be gravely disabled, to be given an evaluation of his or her condition.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would, when a court with jurisdiction over a person in a criminal case orders an evaluation of the person's mental condition, and that evaluation leads to a conservatorship investigation, require the officer providing the conservatorship investigation to serve a copy of the report on the defendant or the defendant's counsel.

The bill would require the investigating officer, upon the prior written request of the defendant or the defendant's counsel, to submit a copy of the report to the court hearing the criminal case, the district attorney, and the county probation department. The bill would require that the conservatorship investigation report and the information contained therein be kept confidential and not be further disclosed to anyone without the prior written consent of the defendant. The bill would, with certain exceptions, require that after disposition of the criminal case, the court place all copies of the report in a sealed file. By increasing the duties of local officials, this bill would impose a state-mandated local program.

This bill would make legislative findings to the effect that any limitation on the public's right of access to the report is outweighed by the need to protect the privacy interests of the proposed conservatee and to prevent the chilling effect that would result from disclosure.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by

the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 1601 of the Penal Code is amended to read:

1601. (a) In the case of any person charged with and found incompetent on a charge of, convicted of, or found not guilty by reason of insanity of murder, mayhem, aggravated mayhem, a violation of Section 207, 209, or 209.5 in which the victim suffers intentionally inflicted great bodily injury, robbery or carjacking with a deadly or dangerous weapon or in which the victim suffers great bodily injury, a violation of subdivision (a) or (b) of Section 451, a violation of paragraph (2), (3), or (6) of subdivision (a) of Section 261, a violation of paragraph (1) or (4) of subdivision (a) of Section 262, a violation of Section 459 in the first degree, a violation of Section 220 in which the victim suffers great bodily injury, a violation of Section 288, a violation of Section 18715, 18725, 18740, 18745, 18750, or 18755, or any felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, outpatient status under this title shall not be available until that person has actually been confined in a state hospital or other treatment facility for 180 days or more after having been committed under the provisions of law specified in Section 1600, unless the court finds a suitable placement, including, but not limited to, an outpatient placement program, that would provide the person with more appropriate mental health treatment and the court finds that the placement would not pose a danger to the health or safety of others, including, but not limited to, the safety of the victim and the victim's family.

(b) In the case of any person charged with, and found incompetent on a charge of, or convicted of, any misdemeanor or any felony other than those described in subdivision (a), or found not guilty of any misdemeanor by reason of insanity, outpatient status under this title may be granted by the court prior to actual

confinement in a state hospital or other treatment facility under the provisions of law specified in Section 1600.

SEC. 2. Section 1602 of the Penal Code is amended to read:

1602. (a) Before any person subject to the provisions of subdivision (b) of Section 1601 may be placed on outpatient status, the court shall consider all of the following criteria:

(1) In the case of a person who is an inpatient, whether the director of the state hospital or other treatment facility to which the person has been committed advises the court that the defendant will not be a danger to the health and safety of others while on outpatient status, and will benefit from such outpatient status.

(2) In all cases, whether the community program director or a designee advises the court that the defendant will not be a danger to the health and safety of others while on outpatient status, will benefit from such status, and identifies an appropriate program of supervision and treatment.

(b) Prior to determining whether to place the person on outpatient status, the court shall provide actual notice to the prosecutor and defense counsel, and to the victim, and shall hold a hearing at which the court may specifically order outpatient status for the person.

(c) The community program director or a designee shall prepare and submit the evaluation and the treatment plan specified in paragraph (2) of subdivision (a) to the court within 15 calendar days after notification by the court to do so, except that in the case of a person who is an inpatient, the evaluation and treatment plan shall be submitted within 30 calendar days after notification by the court to do so.

(d) Any evaluations and recommendations pursuant to paragraphs (1) and (2) of subdivision (a) shall include review and consideration of complete, available information regarding the circumstances of the criminal offense and the person's prior criminal history.

SEC. 3. Section 1603 of the Penal Code is amended to read:

1603. (a) Before any person subject to subdivision (a) of Section 1601 may be placed on outpatient status the court shall consider all of the following criteria:

(1) Whether the director of the state hospital or other treatment facility to which the person has been committed advises the committing court and the prosecutor that the defendant would no

longer be a danger to the health and safety of others, including himself or herself, while under supervision and treatment in the community, and will benefit from that status.

(2) Whether the community program director advises the court that the defendant will benefit from that status, and identifies an appropriate program of supervision and treatment.

(b) (1) Prior to release of a person under subdivision (a), the prosecutor shall provide notice of the hearing date and pending release to the victim or next of kin of the victim of the offense for which the person was committed where a request for the notice has been filed with the court, and after a hearing in court, the court shall specifically approve the recommendation and plan for outpatient status pursuant to Section 1604. The burden shall be on the victim or next of kin to the victim to keep the court apprised of the party's current mailing address.

(2) In any case in which the victim or next of kin to the victim has filed a request for notice with the director of the state hospital or other treatment facility, he or she shall be notified by the director at the inception of any program in which the committed person would be allowed any type of day release unattended by the staff of the facility.

(c) The community program director shall prepare and submit the evaluation and the treatment plan specified in paragraph (2) of subdivision (a) to the court within 30 calendar days after notification by the court to do so.

(d) Any evaluations and recommendations pursuant to paragraphs (1) and (2) of subdivision (a) shall include review and consideration of complete, available information regarding the circumstances of the criminal offense and the person's prior criminal history.

SEC. 4. Section 5354 of the Welfare and Institutions Code is amended to read:

5354. (a) The officer providing conservatorship investigation shall investigate all available alternatives to conservatorship and shall recommend conservatorship to the court only if no suitable alternatives are available. This officer shall render to the court a written report of investigation prior to the hearing. The report to the court shall be comprehensive and shall contain all relevant aspects of the person's medical, psychological, financial, family, vocational, and social condition, and information obtained from

the person's family members, close friends, social worker, or principal therapist. The report shall also contain all available information concerning the person's real and personal property. The facilities providing intensive treatment or comprehensive evaluation shall disclose any records or information which may facilitate the investigation. If the officer providing conservatorship investigation recommends against conservatorship, he or she shall set forth all alternatives available. A copy of the report shall be transmitted to the individual who originally recommended conservatorship, to the person or agency, if any, recommended to serve as conservator, and to the person recommended for conservatorship. The court may receive the report in evidence and may read and consider the contents thereof in rendering its judgment.

(b) Notwithstanding Section 5328, when a court with jurisdiction over a person in a criminal case orders an evaluation of the person's mental condition pursuant to Section 5200, and that evaluation leads to a conservatorship investigation, the officer providing the conservatorship investigation shall serve a copy of the report required under subdivision (a) upon the defendant or the defendant's counsel. Upon the prior written request of the defendant or the defendant's counsel, the officer providing the conservatorship investigation shall also submit a copy of the report to the court hearing the criminal case, the district attorney, and the county probation department. The conservatorship investigation report and the information contained in that report, shall be kept confidential and shall not be further disclosed to anyone without the prior written consent of the defendant. After disposition of the criminal case, the court shall place all copies of the report in a sealed file, except as follows:

- (1) The defendant and the defendant's counsel may retain their copy.
- (2) If the defendant is placed on probation status, the county probation department may retain a copy of the report for the purpose of supervision of the defendant until the probation is terminated, at which time the probation department shall return its copy of the report to the court for placement into the sealed file.

SEC. 5. Pursuant to paragraph (2) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature finds and declares all of the following:

(a) Any limitations to public access to conservator investigation reports pursuant to subdivision (b) of Section 5354 of the Welfare and Institutions Code as proposed by this act are necessary to protect the privacy rights of the proposed conservatee pursuant to Section 1 of Article I of the California Constitution.

(b) The interests in protecting the privacy rights of the proposed conservatee in this situation strongly outweigh the public interest in having access to personally identifiable information about the person and his or her need for and access to mental health services. Moreover, protection of the person's privacy rights is necessary to prevent the chilling effect on access to needed mental health services that would occur if the information were to be made public.

SEC. 6. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Approved _____, 2014

Governor